COLEY O'BRIEN & ASSOCIATES

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July 13, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street NW Suite 222
Washington, DC 20554

Dear Ms. Salas:

I am forwarding my client's comments on the remand issues in the payphone proceeding (cc Docket No. 96-128). Please include this comment as a part of the official record in this proceeding.

Sincerely,

Coley O'Brien

Coley O'Brien
Attorney for the
Allen Lund Company,
L & M Transportation Services, Inc.,
Trans Dynamics, Inc.

CCO/bpo

Enclosures

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COMMENT ON REMAND ISSUES IN THE PAYPHONE PROCEEDING (CC DOCKET NO. 96-128)

I am writing to express my clients (transportation intermediaries) fears and concerns with the Federal Communications Commission (FCC) order on September 20, 1996 which designated the long distance carrier as the proper party to compensate payphone service providers (cc Docket No. 96 - 128, FCC 96 - 388). The FCC was complying with the Telecommunications Act of 1996 where Congress required 'fair' per call compensation for payphone service providers for all completed intrastate and interstate payphone calls (Sec. 276). In the interim, the long distance carriers announced that they intend to pass through their costs for toll free payphone calls (28.4 cents) to the subscriber rather than paying it themselves. This decision by the carriers exposes the innocent 800 subscribers to a greater risk of payphone fraud and abuse.

My clients are 800 subscribers operating in the transportation arena. Telephone communications is the essence of their business ie., the arranging, shipping and tracking of freight. My clients have over 170 toll-free numbers. We estimate that 25-30% of their 800 calls originate from payphones. Consequently, transportation intermediaries are high volume users of 800 calls. The decision of long distance carriers to pass through the per call 800 expense to their subscribers leaves these customers defenseless against unwanted payphone 800 calls and therefore extremely vulnerable to fraud and abuse.

The reasons that fraud and abuse are likely in these circumstances are detailed in the FCC's First Order and Report (cc Docket No. 96-128, 96-388, para. 11) 'Entry into the payphone business appears to be easy. The ability to purchase a payphone, secure a location contract, obtain a payphone line from the LEC, and maintain the payphone are the minimal technical requirements to enter into the payphone business. In addition, payphone lines are part of the tariffed offerings of local exchange carriers and, in some jurisdictions only a simple business line is required for payphone service.' Another factor which facilitates entry and exit is the payphone hardware's high mobility. This feature lowers the locational risk to the payphone service provider and should help increase payphone availability. There are also no significant scale or scope economies that would impede entry of new firms. As a result of these low payphone entry barriers, payphone ownership opportunities increase, including the opportunity to profit handsomely (28.4-30 cents per call) by making anonymous calls to the 35 million 800/888 numbers available in the marketplace.

The final element for fraud and abuse to occur is a person with criminal intent. In light of all the recent incidents of slamming, spamming and cramming, how can anyone doubt the existence of a criminal element operating in the telecommunications industry. These people can purchase a payphone, hookup with an LEC and begin dialing the 35 million 800/888 numbers for 30 cents per call. They would never have to dial the same toll free number twice. Also since payment is triggered when the connection is made, no calling party identification is necessary. The fact that there are millions of possible fraud targets is not reassuring to my clients. An occasional call would obviously be harmless. However, if you were targeted by a disgruntled competitor or an alienated worker you could suffer severe financial harm, even bankruptcy for small businesses, before discovering the perpetrator.

One of the important justifications for FCC ordered carrier liability was the availability of blocking for unwanted payphone calls. We now learn that blocking, even if technically feasible, is expensive, unwanted by carriers and undermines the spirit of the 1996 Telecommunications Act by restricting communications service. In addition blocking is not even an option for many transportation businesses who depend on 800 numbers to service their customers. Without blocking as an option, the 800 subscriber has no defense against unwanted payphone calls. In fact, carrier liability actually forces innocent 800 customers to pay for collect calls from strangers. Where are the consumer protections for these customers?

My clients, as successful small businessmen, want to control their costs and eliminate or minimize financial risks. Carrier liability, however, makes payphone fraud more likely rather than less likely in these circumstances. The only possible deterrent to this criminal activity is an honest and vigilant carrier who would report a customer for unusually high toll free volume or payments. Customer reporting would be against the carrier's financial interest especially in these circumstances. Since it was the carrier's toll free pass through decision which increased the risk of payphone fraud and abuse in the first place, the carrier is not your ideal payphone policeman. With the carrier providing our only defense against payphone fraud and abuse we should find another way to compensate the payphone service provider. Caller pay would certainly eliminate fraud and abuse. Another possibility is to spread the cost to all toll free calling parties - the carrier, the 800 subscriber and the payphone service provider. By allocating costs on a more equitable basis among the parties to the transaction, you reduce the economic incentive and therefore the incidence of payphone fraud and abuse.

The Telecommunications Act of 1996 called for 'fair' compensation for payphone service providers (Sec. 276). However, the FCC failed to properly implement this congressional policy when it ordered the carrier to be liable for all toll free calls made from a payphone. This FCC order (cc Docket No. 96 - 128, FCC 96 - 388, September 20, 1996) contravenes the directive by Congress (Sec. 276) by greatly increasing the risk of payphone fraud and abuse. While the level of compensation is also very important to my clients, carrier liability exposes them to a higher incidence of fraud and hence a much greater and continuing financial risk. Increased fraud and abuse is the antithesis of 'fair' compensation. Consequently, to eliminate fraud and abuse and protect the innocent 800 subscribers we must reexamine the carrier compensation scheme and make it truly fair for all participants.

RESPECTFULLY SUBMITTED,

COLEY O'BRIEN
ATTORNEY FOR THE
ALLEN LUND COMPANY,
L & M TRANSPORTATION SERVICES, INC.,
TRANS DYNAMICS, INC.